

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-192-E

In re:

Dominion Energy South Carolina,
Incorporated Coal Retirement Docket
Opened Pursuant to Commission Order
No. 2021-418

**INTERVENORS' REPLY IN
SUPPORT OF THEIR JOINT
MOTION REQUESTING
AMENDED PROCEDURAL
SCHEDULE & CLARIFICATION
OF SCOPE OF PROCEEDING**

Sierra Club, Southern Alliance for Clean Energy, South Carolina Coastal Conservation League, and the Carolinas Clean Energy Business Association (collectively, “Intervenors”), in accordance with S.C. Code Ann. Regs. 103–829, submit this reply brief in support of their Joint Motion Requesting an Amended Procedural Schedule and Clarification of Scope of the above-referenced docket. Intervenors respectfully request the Public Service Commission of South Carolina (the “Commission”) grant their motion as Intervenors’ interpretation of the scope of this proceeding better harmonizes the intent of Commission Orders 2020-832 and 2021-418.

1. Clarification on Scope of Docket 2021-192-E

In its Joint Motion, Intervenors requested the Commission to clarify the scope of this proceeding. In Order No. 2020-832, the Commission ordered the opening of this docket to assess the retirement and replacement of Dominion Energy South Carolina’s (“DESC”) coal plants. Pursuant to Order No. 2020-832, this proceeding’s objectives are to:

- 1) “evaluate the reliability risks and environmental costs of continued operation of the coal plants as well as options, informed by resource bids, to replace legacy coal technology with state-of-the-art clean energy,” and

- 2) require DESC “to perform a comprehensive coal retirement analysis to inform development of its 2022 IRP Update, and to solicit parties’ recommendations on guidelines for performing this analysis and approve a set of guidelines prior to DESC’s 2022 IRP Update development process via the ongoing IRP Stakeholder Process.”¹

The Commission defined a comprehensive and robust retirement analysis as “assessing all the costs and benefits associated with near and mid-term retirement dates such as capital expenditures, environmental expenditures while considering all available resources as potential replacements.”²

Pursuant to these objectives and the definition of a comprehensive retirement analysis, Intervenors have been preparing to provide substantive analysis regarding the methodology and assumptions used in the forthcoming Coal Retirement Study (“Retirement Study”) in their direct testimonies.

In their respective responses to the Joint Motion, ORS and DESC take the position that this docket should be for “informational” purposes only. In addition, ORS appears to be arguing that if the Commission issues an Order in this docket that it would run the risk of substituting the Commission’s judgment for that of DESC management. Intervenors disagree on both accounts.

a. ORS’ Response not only misinterprets Intervenors’ Motion, it advances an extraordinary – and incorrect – position that the Commission has no meaningful authority over DESC’s resource planning decisions.

ORS’ response states that “any order issued in Docket No. 2021-192-E that requires DESC to retire coal plants, the method or date by which it must retire coal plants, or selection of a particular generation source to be used in place of coal plant generation has a high likelihood of substituting the Commission’s judgement for that of DESC management.”³

ORS misreads both Intervenors’ Motion and the Commission’s authority. Intervenors are not asking the Commission to order the retirement of the Wateree or Williams coal plants or their

¹ Order No. 2020-832 at 40.

² *Id.* at 39.

³ ORS Response Brief at 3.

replacement with any specific generation source; nor do Intervenor believe that was the Commission's intent when it issued Order No. 2020-832 and required DESC to perform a comprehensive coal retirement study. Rather, Intervenor are requesting that the Commission exercise its clear statutory authority under Act 62 to:

- (1) Allow parties to provide substantive testimony on DESC's Retirement Study to better inform the Commission of the costs and benefits of retiring the Wateree and Williams Plants by December 31, 2028 in lieu of spending ratepayer dollars to make those units comply with the Effluent Limitation Guidelines ("ELGs"); and
- (2) Issue an Order that includes findings about whether DESC's Retirement Study adequately and correctly considered all viable alternatives, and to establish a record that can be used to evaluate whether any proposal DESC presents in future IRP proceedings that relies on the Retirement Study is in the best interests of ratepayers.

Of course, this Commission retains full authority to deny ELG costs if DESC seeks to recover those costs from ratepayers and those costs are unjust or unreasonable. S.C. Code Ann. § 58-27-850. Recovery of the ELG costs from ratepayers is only justified if it is just and reasonable for DESC to keep Wateree and Williams online past December 31, 2028, instead of retiring them. S.C. Code § 58-27-810. Likewise, recovery of costs from ratepayers for the continued operation of Wateree and Williams can be disallowed if the costs for the continued operation of those plants are found to be unreasonable. S.C. Code Ann. § 58-27-850. The Retirement Study, which is intended to "evaluate the reliability risks and environmental costs of continued operation of the coal plants as well as options, informed by resource bids, to replace legacy coal technology with state-of-the-art clean energy"⁴ will provide valuable information on whether continuing to operate the coal plants is the best path forward for ratepayers, and it is imperative that the inputs and methodologies supporting that Retirement Study are accurate and that any review of the Retirement Study be done in a timely fashion.

⁴ Order No. 2020-832 at 40.

Of additional concern, Intervenor is surprised that ORS would suggest that the Commission has such limited influence or regulatory authority over utility decision-making. This proceeding is a direct result of the Commission's determination in DESC's 2020 IRP that the Company's failure to conduct an adequate coal retirement analysis rendered its IRP deficient under Act 62.⁵ As the Commission and ORS are well aware, Act 62 and the IRP provisions within it were enacted to give the Commission expanded oversight and authority over utility resource planning, after the abandonment of V.C. Summer, an extraordinary failure of planning and management that cost South Carolina ratepayers billions of dollars. In particular, the Commission must determine the "most reasonable and prudent" plan and is authorized to approve, reject, or modify the IRP and in some cases, "mandate further remedies."⁶

While the Commission's IRP orders are not, on their own, "determinative of the reasonableness or prudence of the acquisition or construction of any resource or the making of any expenditure,"⁷ the Commission most certainly has the authority, and is in fact bound, to issue decisions that lay out the "Commission's judgment" about the reasonableness and prudence of the Company's plans.⁸ Those decisions are then used to inform specific approvals or requests for cost recovery at a later date, including the retirement and continued operation of specific facilities. For instance, under the state Siting Act, the Commission may require that proposed facilities be consistent with an integrated resource plan approved by the Commission, and the Commission in a rate case may disallow any costs the utility expends that are not just and reasonable. S.C. Code

⁵ Order No. 2020-832 at 39 ("In consideration of the above evidence, the Commission concludes that because it failed to properly analyze facility retirements, the Proposed IRP does not meet Act 62's requirement that it consider facility retirement assumptions.").

⁶ S.C. Code Ann. § 58-37-40(C)(1) and (3).

⁷ S.C. Code Ann. § 58-37-40 (C)(4).

⁸ S.C. Code Ann. § 58-37-40(C)(2) ("The commission shall approve an electrical utility's integrated resource plan if the commission determines that the proposed integrated resource plan represents the *most reasonable and prudent means of meeting the electrical utility's energy and capacity needs as of the time the plan is reviewed.*") (emphasis added).

Ann. § 58-27-850. The very purpose of Act 62’s IRP requirements is to ensure utilities’ resource planning decisions and process are vetted with the Commission *prior to* the utility seeking to construct a new resource, retire or continue to operate an existing facility, or recover associated costs. ORS’ contention that “the Commission does not have the statutory authority to mandate the timing and nature of resource retirement or the selection of which generation resources must be built” fails to fully account for the broad statutory authority granted to this Commission through rate-making, facility siting, and resource planning, and instead suggests that exercising its statutory authority would somehow substitute the Commission’s discretion and judgment “for that of the officers and directors chosen to operate the utilities” in a manner that is legally problematic.⁹

b. The impending ELG deadline requires the Retirement Studies to be substantively analyzed in this docket.

ORS and DESC believe that substantive testimony regarding the Retirement Study in this docket are inappropriate and beyond the scope of this proceeding. Furthermore, they want to limit testimony to the procedural schedule and any statutory or regulatory deadlines for the ELGs.¹⁰ As evidence, ORS and DESC point to the language of Order No. 2021-418, the one-page directive order opening this proceeding: “...the Company and the parties can advise the Commission on an appropriate procedural schedule along with any statutory or regulatory deadlines that might need to be addressed.” ORS further argues that “[i]n order to harmonize both Order Nos. 2020-832 and 2021-418, Docket No. 2021-192-E should function as an information gathering docket that serves to better inform the IRP process.”¹¹

⁹ See ORS Response Brief at 3.

¹⁰ ORS Response Brief at 3; DESC Response Brief at 4-5.

¹¹ South Carolina Office of Regulatory Staff Response to Joint Motion Requesting Amended Procedural Schedule and Clarification of Scope of Proceeding, at 3 (Mar. 14, 2022) [hereinafter “ORS Response”].

Intervenors disagree. ORS' and DESC's framing of this docket as "informational" fail to harmonize Order Nos. 2020-832 and 2021-418. Instead, it treats the Commission's conclusions and reasoning in Order No. 2020-832 as mere dicta. The Commission rejected DESC's 2020 IRP due to, among other reasons, DESC's failure to properly analyze facility retirements.¹² Permitting Intervenors the opportunity to provide substantive analysis and testimony on the Retirement Study satisfies the Commission's request for a robust retirement analysis and increases the likelihood of DESC avoiding similar fatal flaws in the 2022 IRP Update and the 2023 IRP.

Even if the Commission agrees with ORS and DESC that this proceeding should function only as an information-gathering docket, informational should not mean "unvetted" or "irrelevant." ORS and DESC's position would postpone any substantive discussion and testimony until the 2023 IRP, thereby forcing the Commission, DESC, ORS and Intervenors to do the relevant analysis on the Retirement Study in the midst of the rest of the IRP process, rather than having it already done and available for the IRP to be properly based upon. Permitting Intervenors to provide substantive testimony on the Retirement Study's methodologies and assumptions—at a minimum in this docket—promotes judicial economy by better informing the IRP process and narrowing the issues in later IRP proceedings.

Further, Intervenors reiterate that time is of the essence. There are impending deadlines to comply with the ELG rule (December 31, 2025),¹³ as this Commission recognized in directing the retirement analysis to be conducted "prior to making any decisions regarding whether to retrofit

¹² See Order No. 2020-832 at 39–40; *see also* S.C. Code Ann. § 58-37-40(B)(1)(e)(ii), (h).

¹³ DESC could also opt into the Voluntary Compliance Program under 40 C.F.R. 423.13(g)(3) which would push compliance with the ELG rule until December 31, 2028; however, DESC stated in response to Sierra Club Discovery Request 2-8 that it was not pursuing that option for the Williams Plant. Sierra Club 2-8 is attached as Exhibit A.

the Williams and Wateree units to comply with the ELG rule” (emphasis added).¹⁴ Unfortunately, it appears that DESC may have already made a final decision with respect to the Williams Plant:

“[g]iven the 12/31/2025 compliance deadline for FGD Wastewater under the ELG rule, the Company is undertaking compliance projects at Williams Station to facilitate operation past 12/31/2025. With uncertainty around the conclusions of the coal retirement study and future resource planning decisions, it is necessary to make the ELG investments at Williams so the unit can remain available to meet system needs.”¹⁵

Therefore, it seems that DESC has already decided to retrofit the Williams Plant to comply with the ELG rule in contravention of Order No. 2020-832, and before its Retirement Study has been completed and filed with this Commission. This pre-Retirement Study decision undercuts the credibility of the Retirement Study and should heighten the scrutiny to which the Retirement Study is subject to by Intervenors and this Commission. Furthermore, examining the evidentiary basis of the Company’s plant retirement assumptions prior to the Company’s actions making them moot would not usurp the Company’s managerial prerogatives, but rather, would help fulfill the Commission’s statutory requirement to ensure that IRP inputs and assumptions are reasonable.

If Intervenors are limited in their ability to address the substance of the Retirement Study in this docket and must wait a year for the 2023 IRP docket, DESC will likely have already committed capital expenditures to comply with the ELG rule, at a minimum, at the Williams Plant prior to the Commission’s consideration of both the 2022 IRP Update and the 2023 IRP. As such, further delay risks harm to ratepayers in South Carolina. The practical demands of statutory and regulatory deadlines, in combination with this Commission’s requirement to delay making any final ELG retrofit decisions until *after* the Retirement Study is completed, favor this proceeding involving a substantive review of the Retirement Study.

¹⁴ Order No. 2020-832 at 40.

¹⁵ See Exhibit A.

2. Motion to Amend Procedural Schedule

Intervenors Joint Motion requested to modify the procedural schedule to afford Intervenors a meaningful opportunity to respond to the DESC Retirement Study, and to provide substantive testimony that could aid this Commission when making determinations in this proceeding. Intervenors grew concerned when it became apparent that the procedural schedule, as amended on October 27, 2021, will not afford this opportunity, as DESC “plans to complete the Coal Retirement Study in May of 2022 so that it may present it in the direct prefiled testimony of the Company’s witnesses in the Coal Retirement Docket.”¹⁶ Currently, the procedural schedule requires *all* parties to submit direct testimony and exhibits on May 16, 2022.

In light of this revelation, Intervenors made a reasonable request to further amend the schedule to accommodate DESC’s timeline and Intervenors’ need to review the Retirement Study before submitting testimony to the Commission. DESC’s Response to the Joint Motion characterized the request as “threaten[ing] to cause further delays to a complex, resource intensive and time-consuming process to determine the optimum path forward for the retirements of the Williams and Wateree coal units.”¹⁷ ORS took no position on Intervenors’ request to further amend the procedural schedule.

Intervenors disagree with DESC’s characterization of its motion. Intervenors contend that their proposed amended schedule enhances the parties’ and Commission’s resources by only submitting testimony that has value. Without knowing the contents of the Retirement Study, Intervenors have no way of knowing whether their testimony would be relevant and responsive to achieving the Commission’s objectives in this proceeding. Additionally, Intervenors seek to reduce

¹⁶ DESC Response Brief at 6.

¹⁷ It should be noted that DESC’s own description of this proceeding assumes that an optimum path forward will be determined for the Williams and Wateree coal unit.

the complexity and time involved in crafting a retirement analysis by providing responsive testimony that will build greater consensus over DESC's methodology and assumptions now, and reduce and/or minimize litigation in later proceedings (i.e., DESC's 2023 IRP). Therefore, Intervenors request the Commission grant the proposed amended procedural schedule.

CONCLUSION

In conclusion, Intervenors request that the Commission clarify that this docket encompasses a substantive review of DESC's Coal Retirement Study to meet the standards outlined in Order No. 2020-832 and to properly inform both the 2022 IRP Update and the 2023 IRP. In the alternative, if the Commission decides that this docket should be "for informational purposes only," Intervenors request that testimony not be limited to only procedural schedules and regulatory deadlines, as suggested by ORS and DESC, but that Intervenors be allowed to submit testimony critiquing the substance of DESC's Retirement Study.

Intervenors also request that the Commission adopt the following schedule to allow the Parties to be able to adequately respond to the Retirement Study:

Action/Due Date	Date
DESC Files Direct Testimony and Exhibits including Coal Retirement Study	May 16, 2022
Intervenors and Office of Regulatory Staff ("ORS") file Direct Testimony	June 27, 2022
DESC files Rebuttal Testimony	July 18, 2022
Hearing on or after	August 1, 2022

Respectfully submitted this 21st day of March, 2022.



Dorothy E. Jaffe (*pro hac vice*)
Justin T. Somelofske (*pro hac vice*)
50 F St NW, Eighth Floor
Washington, D.C. 20001
(202) 675-6275
dori.jaffe@sierraclub.org
justin.somelofske@sierraclub.org

Robert Guild
S.C. Bar No. 2358
314 Pall Mall Street
Columbia, SC 29201
(803) 917-5738
bguild@mindspring.com

Counsel for Sierra Club

s/Richard Whitt
Whitt Law Firm, LLC
P.O. Box 362
Irmo, SC 29063
richard@rlwhitt.law

*Counsel for Carolinas Clean Energy Business
Association*

s/ Kate Mixson
Staff Attorney
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
kmixson@selcsc.org

*Counsel for South Carolina Coastal Conservation
League and Southern Alliance for Clean Energy*

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-192-E**

In re:

Dominion Energy South Carolina,
Incorporated Coal Retirement Docket
Opened Pursuant to Commission Order
No. 2021-418

Certificate of Service

I hereby certify that I have served the persons listed on the official service list for Docket No. 2021-192-E, listed below, a copy of the Intervenor's Reply in Support of their Joint Motion Requesting Amended Procedural Schedule and Clarification of Scope of Proceeding, via electronic mail on this 21st day of March, 2022. This is submitted on behalf of the Sierra Club, Southern Alliance Clean Energy, South Carolina Coastal Conservation League, and Carolinas Clean Energy Business Association.

Alexander G. Shissias,
alex@shissiaslawfirm.com

Courtney E. Walsh
court.walsh@nelsonmullins.com

Andrew M. Bateman,
abateman@ors.sc.gov

Damon E. Xenopoulos,
DEX@smxblaw.com

Belton T. Zeigler,
Belton.zeigler@wbd-us.com

Emma C. Clancy,
eclancy@selcsc.org

Carri Grube-Lybarker,
clybarker@scconsumer.gov

K. Chad Burgess,
Chad.burgess@dominionenergy.com

Christopher M. Huber,
chuber@ors.sc.gov

Katherine Lee Mixson,
kmixson@selcsc.org

Matthew W. Gissendanner,
matthew.gissendanner@dominionenergy.com

Richard L. Whitt,
richard@rlwhitt.law

Roger P. Hall, rhall@scconsumer.gov

Scott Elliott
sellott@elliottlaw.us

Weston Adams III,
Weston.adams@nelsonmullins.com



Dorothy Jaffe

**DOMINION ENERGY SOUTH CAROLINA, INC.
SIERRA CLUB'S
SECOND SET OF DATA REQUEST
DOCKET NO. 2021-192-E**

REQUEST NO. 2-8:

Refer to the DESC IRP Stakeholder Advisory Group Meeting #6 Presentation, Slide 50, where it states: "Williams ELG costs are assigned on 01/01/2025 and cannot be avoided." Please provide an explanation as to why the Company is assigning the Williams Effluent Limitation Guidelines ("ELG") costs on January 1, 2025 and why the Company cannot avoid the ELG costs at Williams.

- a. Did the Company file a Noticed of Planned Participation with the South Carolina Department of Health and Environmental Control under 40 C.F.R. §§ 423.19(e), 423.19(f), or 423.19(h) for the Williams Plant?
- b. Did the Company consider opting to comply with the Voluntary Incentive Program requirements under 40 C.F.R. § 423.13(g)(3), which has a compliance deadline of December 31, 2028? If not, why not?
- c. Has the Company considered any replacement resources that can be developed between now and January 1, 2025 to avoid the ELG costs at Williams? If not, why not?

RESPONSE NO. 2-8:

Please see DESC's response to 2-8b. below.

- a. No.
- b. Yes, the Company did consider complying with the Voluntary Incentive Program requirements for Williams Station. However, given Williams Station's critical role in maintaining transmission system reliability, it has a sufficient projected future capacity factor where the more cost-effective and proven treat-and-discharge technology pathway is technically viable.

Given the 12/31/2025 compliance deadline for FGD Wastewater under the ELG rule, the Company is undertaking compliance projects at Williams Station to facilitate operation past 12/31/2025. With uncertainty around the conclusions of the coal retirement study and future resource planning decisions, it is necessary to make the ELG investments at Williams so the unit can remain available to meet system needs.

- c. No, the Company is still in the process of conducting the Commission-mandated retirement studies to determine if retirement of Williams Station is feasible and in the public interest.